GUNALAN PECHIMUTU v. PACIFIC & ORIENT INSURANCE CO BHD & ANOR AND OTHER APPEALS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
CHOO KAH SING JCA
AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NOS: J-04(IM)-493-10-2022; J-04(IM)-579-12-2022 & J-04(IM)-580-12-2022]
25 APRIL 2025

Abstract – *Pursuant to the statutory liability imposed upon insurers under s. 96(1) of the Road Transport Act 1987, insurers are entitled to intervene in negligence suits involving their insured. To hold otherwise will be contrary to the intention of Parliament in imposing the said statutory liability. This is especially when the intervention of the insurers is necessary, and would lead to securing a just, expeditious and economical disposal of the negligence suit.*

CIVIL PROCEDURE: *Interlocutory proceedings – Leave to intervene – Application for – Application by insurer to intervene in negligence suit in Sessions Court ('application') – Whether application ought to be allowed – Whether High Court's judgments regarding insurer's application were ruling and 'non-speaking' judgments – Whether necessary for insurer to intervene in negligence suit pursuant to s. 96(1) of Road Transport Act 1987 – Whether Sessions Court functus officio when it heard insurer's application – Whether insurer, by its conduct, estopped from proceeding with application – Whether issues that arose live issues*

There were three appeals before the court, namely, Appeals '493', '579' and '580' ('three appeals'). With respect to Appeal 493, pursuant to an accident, the plaintiff therein commenced a claim against the defendant, for personal injuries and pecuniary losses ('negligence suit'). The first respondent in all the three appeals, Pacific & Orient Insurance Co Bhd ('P&O'), had appointed one Messrs VM Kumaran & Co ('VM Kumaran') to defend the defendant. P&O was the insurer for the motorcycle of the defendant. However, unknown to the defendant, P&O subsequently filed an originating summons in the High Court ('OS 259') for a declaratory order that the insurance policy covering the said motorcycle was null and unenforceable. The declaratory order was applied purportedly based on the defendant's admission that he was never involved in the accident, his initial police report for the accident was a false report, and the plaintiff's claim was a fraud. Upon the instructions of P&O, VM Kumaran applied to be discharged from acting for the defendant. An interlocutory judgment in default was then entered against the defendant, and the plaintiff proceeded for the assessment of damages, which

A the Sessions Court allowed and ordered the defendant to pay a judgment sum of RM2.5 million ('29 March 2017 judgment'). The plaintiff later filed a recovery action against P&O, to demand the payment of the judgment sum. This prompted P&O to file a notice of application ('encl. 25') under O. 15 r. 4(1) and/or O. 4 r. 6(2) of the Rules of Court 2012 ('ROC') for an order,
B *inter alia*, (i) P&O be allowed to intervene in the negligence suit as the second defendant; and (ii) the 29 March 2017 judgment be set aside. Enclosure 25 was subsequently dismissed by the Sessions Court. Dissatisfied, P&O filed an appeal to the High Court. After the High Court allowed the appeal, the plaintiff filed Appeal 493 to this court. Appeal 493, after being heard by another panel of this court, was allowed on the ground that the Sessions
C Court was *functus officio*, as such, P&O could no longer intervene in the negligence suit. Meanwhile, regarding Appeals 579 and 580, they also emanated from a civil action commenced in the Sessions Court, due to an accident that occurred between the parties therein ('Suit 632' or 'negligence suit'), which resulted in a judgment-in-default to be entered against the
D defendant ('28 September 2017 judgment'). The facts for these two appeals were identical with Appeal 493, among others, on the discharge of the solicitor, Messrs SK Lee, based on grounds of fraud. Briefly, P&O had filed two applications in the Sessions Court, namely, encls. 28 and 40, which *inter alia*, for intervening in Suit 632 and for the 28 September 2017 judgment
E to be set aside. Both encls. 28 and 40 were dismissed by the Sessions Court, but they were allowed by the High Court which opined that the matter was only remitted to the Sessions Court to allow the application to set aside the judgment-in-default to be heard on its merits. Aggrieved, the plaintiffs in Suit 632 filed Appeals 579 and 580 in this court. The appeals were heard by
F another panel of this court, and they affirmed the High Court order, but with a variation that the matter be remitted to the Sessions Court for trial with the insured as the first defendant, while P&O as the second defendant. As some of the parties were dissatisfied by the outcome of the three appeals, they filed review applications against this court's decisions. The review applications
G were subsequently allowed by a different panel of this court, which found that there was no estoppel or *res judicata* issue as all issues that arose were live issues that ought to be ventilated during the re-hearing of the appeals. Hence, the re-hearing of the three appeals by this court. The issues that arose were: (i) whether the High Court's judgments with respect to encls. 25, 28 and 40 were not a ruling and 'non-speaking' judgments; (ii) whether
H P&O could intervene in the negligence suit; (iii) whether the Sessions Court proceeding had concluded; (iv) whether P&O was estopped from filing encls. 25, 28 and 40; (v) what was the effect of the High Court's policy invalidation order and the High Court's dismissal (P&O's suit); and (vi) whether P&O had abused the court's process.

I

Held (dismissing appeals)
Per Ahmad Kamal Md Shahid JCA delivering the judgment of the court:

(1) The High Court's decisions with respect to encls. 25, 28 and 40 fell within the definition of 'decision' in s. 3 of the Courts of Judicature Act 1964 ('CJA'). This was because, if the three appeals were allowed by this court, *ie*, P&O could not intervene in the negligence suit and could not set aside the Sessions Court's judgment, the plaintiffs could then enforce directly the same judgment against P&O under s. 96(1) of the Road Transport Act 1987 ('RTA'). In such an event, the rights of the plaintiffs and P&O were finally disposed of within the meaning of 'decision' under s. 3 of the CJA. Consequently, the said High Court's decisions were final 'orders' within the definition of 'decision' under s. 3 of the CJA, which were appealable to this court under s. 67(1) of the CJA. (para 26)

(2) The grounds of judgments ('GOJs') for the High Court's decisions with respect to encls. 25, 28 and 40 were non-speaking judgments. However, the plaintiff's submission that since the GOJs had not provided any reason for the said High Court's decisions, this court should intervene and allow the three appeals, could not be agreed. Although the High Court's judgments were not reasoned, this court, as an appellate court, had the judicial duty to decide an appeal by: (i) going through the appeal records and the parties' written submissions; and (ii) listening to the oral submission by learned counsel. Moreover, the fact that a judgment was a non-speaking judgment, it did not follow that a retrial or a rehearing should be allowed. (paras 27-30)

(3a) P&O had a right to intervene based on the following grounds: (i) in view of the statutory liability under s. 96(1) of the Road Transport Act 1987 ('RTA'), it was necessary for P&O to intervene in the negligence suit under O. 15 r. 6(2)(b)(i) of the ROC, so as to ensure that 'all matters in dispute in the (negligence suit) may be effectually and completely determined and adjudicated upon'; (ii) by virtue of O. 15 r. 6(2)(b)(ii) of the ROC, with regard to the relief claimed by the plaintiffs against the defendant in the negligence suit, there existed a question between (a) the P&O on one hand; and (b) the plaintiffs and defendant, on the other hand – on whether a fraudulent negligence suit had been instituted by the plaintiffs ('question (P&O/plaintiffs/defendant)') for which it would be just and convenient to determine the said question; (iii) O. 15 r. 6(2)(b)(i) and (ii) of the ROC should be 'widely or liberally interpreted' because such an interpretation would ensure that all parties who had any interest in a claimant's suit (insured's liability), would be brought before the Sessions Court trying the claimant's suit so as to secure just, expeditious and economical

A disposal of the claimant's suit; and (iv) in accordance with O. 1A and O. 2 r. 1(2) of the ROC, it would be just for P&O to intervene in the negligence suit so as to ensure that the Sessions Court could decide on whether the negligence suit had been fraudulently filed by the plaintiffs. (para 32)

B **(3b)** In light of the insurer's statutory liability under s. 96(1) of the RTA, P&O had a right to be heard regarding P&O's averment (fraudulent negligence suit) before the Sessions Court decided on the negligence suit. More so, when no evidence had been adduced by the plaintiffs in the negligence suit regarding 100% liability in negligence on the C defendant's part. Other than that, the case laws seemed to suggest that a judgment or order would not bind a party if the party had been deprived of the right to be heard before the judgment or order was made. (paras 33 & 34)

(4) The Sessions Court was not *functus officio* when the Sessions Courts D heard encls. 25, 28 and 40. Section 96(1) of the RTA had expressly provided for the insurer's statutory liability, which entitled it to intervene in the negligence suit. If the doctrine of *functus officio* was applied to deny P&O the right to intervene in the negligence suit, this would be contrary to Parliament's intention in imposing the insurer's E statutory liability under s. 9 of the RTA. (para 38)

(5a) P&O was not estopped by its conduct from proceeding with encls. 25, 28 and 40. This was due to the following reasons: (i) the solicitors were initially appointed by P&O to act for the defendant in the negligence suit. This was understandable because generally (in the F absence of fraud by, among others, the defendant) P&O would be liable under the insurance policy to indemnify the defendant and pay the plaintiffs the judgment sum adjudged by the Sessions Court in the negligence suit pursuant to s. 96(1) of the RTA; (ii) P&O conduct was solely based on its discovery and it was the only lawful option G available to it. P&O could not allege fraud and then instruct the solicitors to continue acting for the defendant. P&O's conduct could not restrain, let alone estop it from exercising its right to resist the insurer's statutory liability under s. 96(1) of the RTA based on the P&O's averment (fraudulent negligence suit); and (iii) the purpose of H equitable estoppel is to achieve justice. If P&O was estopped by its conduct from raising the P&O's averment (fraudulent negligence suit), P&O would face injustice. (para 40)

(5b) There was an inordinate delay of more than two years from the date of the Sessions Court's judgments before the plaintiffs demanded P&O I to honour the judgments under s. 96(1) of the RTA. Such inequitable conduct by the plaintiffs had disentitled the same from relying on the equitable doctrine of estoppel to support the three appeals. (para 41)

(6) The High Court's policy invalidation order did not bind the plaintiffs because P&O had not cited the plaintiffs as co-defendants in the intervener's suit (policy invalidation). As the plaintiffs had been deprived of their right to be heard in the said suit, P&O could not rely on the High Court's policy invalidation order to resist the three appeals. Further the High Court's dismissal (intervener's suit) was of no consequence to the three appeals because P&O's averment (fraudulent negligence suit) could only be tried in the Sessions Court. It must be emphasised that no evidence had been adduced in the negligence suit. Therefore, the question (P&O/plaintiffs/defendant) was still a live issue. (paras 42 & 43)

(7) The exercise of the P&O's right to resist the insurer's statutory liability under s. 96(1) of the RTA could not constitute an abuse of court process, especially considering P&O's discovery and averment (fraudulent negligence suit). More importantly, it was found that the Sessions Court had not commenced a trial to decide on the negligence suit and P&O's averment (fraudulent negligence suit). Considering that the question (P&O/plaintiffs/defendant) regarding P&O's averment (fraudulent negligence suit) was a live issue, the three appeals had not become academic. (paras 45 & 46)

(8) The three appeals were dismissed, and the following orders, among others, were made: (i) P&O was allowed to intervene as a second defendant in the negligence suit; (ii) the Sessions Court's judgments were set aside; and (iii) the negligence suit was remitted to the Sessions Court for an early trial before another SCJ with liberty to all parties to: (a) file further pleadings; and (b) obtain pre-trial case management directions from the said SCJ. (para 47)

Case(s) referred to:

AmGeneral Insurance Bhd v. Sa' Amran Atan & Ors And Other Appeals [2022] 8 CLJ 175 FC ***(refd)***

Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor And Another Appeal [2018] 3 CLJ 427 FC ***(refd)***

Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals [2008] 2 CLJ 121 FC ***(dist)***

Muniandy Thamba Kaundan & Anor v. Development & Commercial Bank Bhd & Anor [1996] 2 CLJ 586 FC ***(refd)***

Toh Seow Ngan & Ors v. Toh Seak Keng & Ors [1990] 2 CLJ 15; [1990] 1 CLJ (Rep) 286 SC ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, ss. 3, 67(1)

Road Transport Act 1987, s. 96(1), (3)

Rules of Court 2012, O. 1A, O. 2 r. 1(2), O. 4 r. 6(2), O. 15 rr. 4(1), (3), 6(2)(b)(i), (ii)

A *(Civil Appeal No: J-04(IM)-493-10-2022)*
For the appellant - Soosay Nathan, G K Ganesan, G Naidu, Teo Han Ley, Lee Yen Yee, Jusween Kaur & TP Vaani; M/s Teo & Assocs
For the 1st respondent - Kamalanathan Ratnam, Vinod R Kamalanathan & Muhammad Azim Akif Saiful Bahari; M/s Vinod Kamalanathan & Assocs
For the 2nd respondent - Lee Sooi Kee; M/s S K Lee

B *(Civil Appeal Nos: J-04(IM)-579-12-2022 & J-04(IM)-580-12-2022)*
For the appellant - Soosay Nathan, G K Ganesan, G Naidu, Teo Han Ley, Lee Yen Yee, Jusween Kaur & TP Vaani; M/s Teo & Assocs
For the 1st respondent - Kamalanathan Ratnam, Vinod R Kamalanathan & Muhammad Azim Akif Saiful Bahari; M/s Vinod Kamalanathan & Assocs
C *For the 2nd respondent - Unrepresented*

[Editor's note: For the High Court judgment, please see Pacific & Orient Insurance Co Bhd v. Gunalan Pechimutu & Anor [2023] CLJU 529; [2023] 1 LNS 529 (affirmed).]

Reported by Syamim Ariffin

D

JUDGMENT

Ahmad Kamal Md Shahid JCA:

Introduction

E

[1] These three appeals came before us after being ordered to be re-heard by the earlier review panel. As a matter of house-keeping, we set out herein the chronology of events surrounding these appeals:

(i) On 1 December 2023, this court, consists of the Panel of Justice Vazeer
F Alam bin Mydin Meera, Justice Azimah binti Omar and Justice Wong Kian Kheong (first COA Panel) dismissed Appeals J-04(IM)-579-12/2022 (Appeal 579) and J-04(IM)-580-12/2022 (Appeal 580). The first COA Panel had affirmed the order of the High Court with variation that the matter be remitted to the Sessions Court for trial with the insured
G as the first defendant and the insurer as the second defendant;

(ii) on 11 December 2023, the Panel comprised of Justice Hadhariah binti Syed Ismail, Justice Hj Azman bin Abdullah, and Justice Azmi bin Ariffin (second COA Panel) allowed Appeal J-04(IM)-493-10/2022 (Appeal 493) and found that the Sessions Court is *functus officio*, as such
H the first respondent *ie*, Pacific & Orient Insurance Co Berhad (P&O) can no longer intervene.

(iii) on 3 January 2024, the appellants in Appeal 579 and Appeal 580 filed in this court two separate review applications under O. 105, Rules of the Court of Appeal 1994. For Appeal 579, the review application was
I registered as J-08(Review)-2-01/2024 (review 2), while for Appeal 580, the review application was registered as J-08(Review)-1-01/2024 (review 1).

(iv) on 15 January 2024, respondent in Appeal 493 also filed a review application and registered as J-08(Review)-4-01/2024 (review 4).

(v) on 2 August 2024, a panel chaired by Justice S Nantha Balan, sat together with Justice Lim Chong Fong and Justice Azizul Azmi bin Adnan (review panel) and heard all the above-mentioned three review applications. The review panel decided to allow all those three review applications with further order that there is no estoppel or *res judicata* issue as all issues are live issues to be determined at the re-hearing of the said appeals. All the three appeals are to be heard together before a new, one panel.

[2] This is how these three appeals come before us, and we heard those three together on 24 October 2024. We reserved our decision for careful deliberation, and this is now our decision.

Background Facts

Appeal 493

[3] On 17 December 2014, the plaintiff was collided by the defendant in an accident. The plaintiff suffered severe injuries and commenced personal injuries and pecuniary losses claim against the defendant *via* Civil Suit No. A53KJ-894-10/2015 (Suit 894) at the Sessions Court of Johor Bahru.

[4] On 19 November 2015, Messrs VM Kumaran & Co was appointed by P&O to defend the defendant and subsequently, filed the defence of the defendant. Unknown to the defendant, on 16 June 2016, P&O filed Originating Summons No. WA-24 NCC-259-06/2016 (OS 259) at the Kuala Lumpur High Court and obtained a declaratory order dated 19 July 2016, which declared that the insurance policy issued to the defendant in respect of motorcycle No. JQM 3044 is null and unenforceable. The plaintiff was not named as a party in the OS 259. The declaratory order was applied purportedly based on the defendant's admission that he was never involved in the said accident, that his initial police report admitting to the accident was a false report, and that the plaintiff's claim was a fraud.

[5] On 15 September 2016, upon the instructions of P&O, Messrs VM Kumaran & Co applied to discharge themselves from acting for the defendant. The Sessions Court Judge (SCJ) granted order in terms on 23 November 2016.

[6] On 7 February 2017, an interlocutory judgment in default was entered against the defendant. The plaintiff thereafter proceeded with the assessment of damages. On 29 March 2017, the SCJ entered the said judgment against the defendant.

[7] On 18 September 2020, the plaintiff filed a recovery action against P&O *vide* Originating Summons No. JA-24NCVC-526-09/2020 at the Johor Bahru High Court, demanding P&O to pay the judgment sum of RM2.5 million ordered by the SCJ in the judgment dated 29 March 2017.

[8] On 5 October 2020, P&O filed a notice of application in encl. 25 (encl. 25) under O. 15 r. 4(1) and/or O. 4 r. 6(2) and O. 15 r. 4(3) of the Rules of Court 2012 (ROC) in Suit 894 for an order *inter alia*; that leave be granted to P&O to intervene in the Sessions Court's proceeding as the second defendant; and that the Sessions Court's order dated 29 March 2017 be set aside.

[9] On 25 May 2021, the learned SCJ dismissed encl. 25 for, among others, the following reasons:

(i) P&O had cited the incorrect provisions of the ROC with respect to encl. 25;

(ii) the proceedings had concluded;

(iii) P&O was estopped from intervening in the proceedings below by their previous conduct in discharging their solicitors from defending the defendant against the plaintiff's claims; and

(iv) the Sessions Court was not the correct forum to ventilate P&O's allegation of fraud. P&O ought to have taken out separate proceedings to set aside the judgment dated 29 March 2017 on the grounds of purported fraud.

[10] On 5 July 2021, P&O appealed to the High Court against the decision of the SCJ on 25 May 2021. On 26 September 2022, the learned High Court Judge (HCJ) allowed P&O's appeal and made, among others, the following orders:

(i) leave is granted to P&O to intervene and to be made the second defendant in the Sessions Court's proceedings; and

(ii) the matter be remitted to the Sessions Court to hear P&O's application to set aside the judgment in default dated 29 March 2017.

[11] Dissatisfied, the plaintiff filed this Appeal 493 which was heard before the second COA Panel as mentioned above. To recap, Appeal 493 was allowed and the second COA Panel found that the Sessions Court is *functus officio*, as such P&O can no longer intervene.

[12] This decision brings to the review application and subsequently, a re-hearing of this Appeal 493 before us.

Appeals 579 And 580

[13] Appeals 579 and 580 emanate from one civil action in the Sessions Court *ie*, JA-A53KJ-632-09/2016 (Suit 632), arising from an accident occurred between both parties.

[14] The fact of the case for these two appeals is more or less identical with Appeal 493 *inter alia*, on the discharge of solicitor *ie*, Messrs SK Lee, on the ground of fraud, based on a finding of the High Court *vide* Originating Summons WA-24NCC-537-12/2016 (OS 537),

[15] To cut it short, P&O had filed two applications in the Sessions Court, namely:

(i) enclosure 28 (encl. 28) - application to intervene in Suit 632 and stay of execution of Sessions Court's judgment dated 28 September 2017 until the hearing and disposal of encl. 40.

(ii) enclosure 40 (encl. 40) - application to intervene in Suit 632 and that the Sessions Court's judgment dated 28 September 2017 be set aside,

[16] The Sessions Court's judgment dated 28 September 2017 is basically the judgment in default entered against the defendant in this Suit 632.

[17] The SCJ had, on 25 May 2021, dismissed both applications in encls. 28 and 40, leading to two appeals in the High Court by P&O, *ie*, Civil Appeal No. JA-12A-25-07/2021 (in respect of encl. 28) and Civil Appeal No. JA-12A-26-07/2021 (in respect of encl. 40).

[18] The HCJ had, on 22 November 2022 allowed both P&O's appeals and held, among others, "... the matter was merely sent back to the Sessions Court for the application to set aside the judgment in default to be made and heard on the merits".

[19] Dissatisfied, the plaintiffs in Suit 632 filed the present Appeals 579 and 580 before the first COA Panel. To recap, the first COA Panel had affirmed the order of the High Court with a variation that the matter be remitted to the Sessions Court for trial with the insured as the first defendant and P&O as the second defendant.

[20] This decision led to the review applications namely, review 1 and 2, and consequently the re-hearing before us.

The Re-hearing Of The Appeal

[21] Before us, the identical issues raised were as follows:

(i) whether the High Court orders dated 26 September 2022 and 22 November 2022 are not a ruling and "non-speaking" judgments;

(ii) whether the P&O can intervene in the negligence suit;

(iii) whether the Sessions Court's proceeding had concluded;

(iv) whether the P&O was estopped from filing encls. 25, 28 and 40;

(v) what is the effect of the High Court's policy invalidation order and High Court's dismissal (P&O's suit); and

(vi) did the P&O abuse the court process.

A **Our Findings**

Whether The High Court Orders Dated 26 September 2022 And 22 November 2022 Are Not A Ruling And "Non-speaking" Judgment

[22] On this issue, we find that when the High Court heard the appeal, it
B was sitting as an appellate court exercising its appellate jurisdiction over the Sessions Court's orders dated 25 May 2021 and 28 September 2017, respectively. There was no preliminary issue at the hearing of the appeal that required the HCJ to make a ruling.

[23] The High Court, on 26 September 2022, allowed P&O's appeal
C (encl. 25) and made, among others, the following orders:

(i) leave is granted to P&O to intervene and to be made the second defendant in the Sessions Court's proceedings; and

(ii) the matter be remitted to the Sessions Court to hear P&O's application to set aside the judgment in default dated 29 March 2017
D

[24] On 22 November 2022, the learned HCJ:

(i) allowed P&O's appeal (encl. 28) as follows, among others:

(a) P&O was allowed to intervene in the negligence suit; and

E (b) the plaintiffs shall pay costs of RM2,500 to P&O.

(High Court's decision (encl. 28)); and

(ii) allowed P&O's appeal (encl. 40) with the following order:

(a) encl. 40 was remitted to the Sessions Court to decide whether the
F Sessions Court's judgment should be set aside; and

(ii) costs of RM2,500 shall be paid by the plaintiffs to P&O. (High Court's decision (encl. 40)).

[25] The question to be decided by this court is whether the three High
G Court's decisions (encls. 25, 28, and 40) finally dispose of the rights of the plaintiffs and P&O within the meaning of the term "decision" in s. 3 of the Courts of Judicature Act 1964 (CJA).

[26] We are of the view that the three High Court's decisions (encls. 25, 28, and 40) fail within the definition of "decision" in s. 3 of the CJA. This
H is because if the three appeals are allowed by the Court of Appeal (COA), *ie*, the P&O cannot intervene in the negligence suit and cannot set aside the Sessions Court's judgment, the plaintiffs can then enforce directly the Sessions Court's judgment against the P&O under s. 96(1) of the Road Transport Act 1987 (RTA). In such an event, the rights of the plaintiffs and
I P&O are finally disposed of within the meaning of the term "decision" in s. 3 of the CJA. Consequently, the three High Court's decisions (encls. 25, 28, and 40) are final "orders" in the definition of "decision" in s. 3 of the CJA, which are appealable to the COA under s. 67(1) of the CJA.

Non-Speaking Judgment

[27] Upon perusal of the three grounds of judgments (GOJs) (encls. 25, 28, and 40) of the High Court, we are of the view that the three GOJs were non-speaking judgments.

[28] Having said so, we are of the opinion that we cannot agree to the submission by the plaintiff's learned counsel that due to the fact that the three GOJs (encls. 25, 28, and 40) had not provided any reason for the three High Court's decisions (encls. 25, 28, and 40), the COA should intervene and allow these three appeals.

[29] Even though the High Court's judgments are not reasoned one, the COA as an appellate court has the judicial duty to decide on appeal by:

(i) going through the appeal records and the parties' written submissions, and

(ii) listening to the oral submission by the learned counsel.

[30] We are guided by the Federal Court's decision in the case of *Dr Hari Krishnan & Anor v. Megat Noor Ishak Megat Ibrahim & Anor And Another Appeal* [2018] 3 CLJ 427; [2018] 3 MLJ 281; [2018] 1 MLRA 535; [2018] 1 AMR 209 when it held as follows:

> *[38] We endorse the view of the Court of Appeal quoted above, and agree that the High Court judgment in the instant case was a nonspeaking judgment one. Nevertheless, as elaborated below, it does not follow that a retrial or a rehearing should be ordered.*
>
> (emphasis added)

Whether The Proposed Intervener (P&O) Can Intervene In The Negligence Suit

[31] Section 96(1) to (3) of the RTA provide as follows:

> *s. 96. Duty of insurers to satisfy judgments against persons insured in respect of third party risks.*
>
> *(1) if, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgment in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgment any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgments.*
>
> *(2) No sum shall be payable by an insurer under subsection (1):*
>
> *(a) in respect of any judgment, unless before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the proceedings;*

(b) in respect of any judgment, so long as execution thereon is stayed pending an appeal; or

(c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability the policy was cancelled by mutual consent or by virtue of any provision contained therein and either:

(i) before the happening of the said event the certificate was surrendered to the insurer or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed;

(ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer or the person to whom the certificate was delivered made such a statutory declaration as aforesaid; or

(iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part in respect of the failure to surrender the certificate.

(3) No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable: Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the grounds on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto.

(emphasis added)

[32] Given the above, we are of the considered view that the P&O had a right to intervene based on the following grounds:

(i) in view of the insurer's statutory liability under s. 96(1) of the RTA, it was "necessary" for P&O to intervene in the negligence suit under O. 15 r. 6(2)(b)(i) of the ROC so as to ensure that "all matters in dispute in the (negligence suit) may be effectually and completely determined and adjudicated upon";

(ii) by virtue of O. 15 r. 6(2)(b)(ii) of the ROC, with regard to the relief claimed by the plaintiffs against the defendant in the negligence suit, there existed a question between:

(a) the P&O on the one hand; and

(b) the plaintiffs and defendant, on the other hand

- on whether a fraudulent negligence suit had been instituted by the plaintiffs (question (P&O/plaintiffs/defendant)) for which it would be just and convenient to determine the question (P&O/plaintiffs/defendant);

(iii) Order 15 r. 6(2)(b)(i) and (ii) of the ROC should be "widely or liberally interpreted" because such an interpretation ensures that all parties who have any interest in a claimant's suit (insured's liability), are brought before the Sessions Court trying the claimant's suit (insured's liability) so as to secure just, expeditious and economical disposal of the claimant's suit (insured liability); and

(iv) in accordance with O. 1A and O. 2 r. 1(2) of the ROC, it is just for P&O to intervene in the negligence suit so as to ensure that the Sessions Court can decide whether the negligence suit had been fraudulently filed by the plaintiffs.

(See *AmGeneral Insurance Bhd v. Sa' Amran Atan & Ors And Other Appeals* [2022] 8 CLJ 175; [2022] 5 MLJ 825; [2022] 6 MLRA 224; [2022] 6 AMR 1 (Federal Court).)

[33] We are of the considered view, in light of the insurer's statutory liability under s. 96(1) of the RTA, P&O had a right to be heard regarding the P&O's averment (fraudulent negligence suit) before the Sessions Court decided the negligence suit more so, when no evidence had been adduced by the plaintiffs in the negligence suit regarding the 100% liability in negligence on the defendant's part.

[34] The case laws seem to suggest that a judgment or order does not bind a party if the party has been deprived of the right to be heard before the judgment or order is made.

[35] In the case of *Toh Seow Ngan & Ors v. Toh Seak Keng & Ors* [1990] 2 CLJ 15; [1990] 1 CLJ (Rep) 286; [1990] 1 MLRA 292; [1990] 2 MLJ 303, the then Supreme Court has decided as follows:

> *[13] ... There is no denial that in breach of the rules of natural justice, the High Court had no jurisdiction to make the consent order affecting the rights of the appellants.*
>
> ...
>
> *[14] For the above reasons, we find the appellants are not estopped from challenging the validity of the consent order.*
>
> (emphasis added)

(See: *Muniandy Thamba Kaundan & Anor v. Development & Commercial Bank Bhd & Anor* [1996] 2 CLJ 586; [1996] 1 MLJ 374; [1996] 1 MLRA 171; [1996] 1 AMR 908] (Federal Court)).

[36] We were referred to by the plaintiffs to support these three appeals to the Federal Court's case of *Hong Leong Bank Bhd v. Staghorn Sdn Bhd & Other Appeals* [2008] 2 CLJ 121; [2007] 3 MLRA 150; [2008] 2 MLJ 622 (*Staghorn*'s case). However, having perused the said judgment, we find that the *Staghorn'*s case (*supra*) can be distinguished from the instant case as follows:

(i) *Staghorn*'s case does not concern the insurer's statutory liability under s. 96(1) of the RTA, which entitles P&O to intervene in the negligence suit;

(ii) unlike *Staghorn*'s case, P&O had a right to be heard with regard to the P&O's averment (fraudulent negligence suit); and

(iii) in *Staghorn*'s case, the order (land sale) was not procured by way of fraud.

Whether The Sessions Court's Proceedings Had Been Concluded

[37] The plaintiffs' learned counsel contended that the proceedings in the Sessions Court had been concluded with the perfection of the Sessions Court's judgment. As such, the Sessions Court was *functus officio* and could not hear encls. 25, 28, and 40.

[38] We are of the view that the Sessions Court was not *functus officio* when the learned SCJ heard encls. 25, 28, and 40. Section 96(1) of the RTA has expressly provided for the insurer's statutory liability, which entitles the intervener to intervene in the negligence suit. If we have applied the doctrine of *functus officio* to deny P&O the right to intervene in the negligence suit, this will be contrary to Parliament's intention in imposing the insurer's statutory liability under s. 96(1) of the RTA.

Whether P&O Was Estopped From Filing Enclosures 25, 28, And 40

[39] The plaintiffs submit that P&O was estopped from obtaining the three High Court's decisions (encls. 25, 28, and 40) due to the following reasons:

(i) P&O had appointed Messrs VM Kumaran & Co and Messrs SK Lee to act for the defendant in the negligence suit but subsequently instructed Messrs VM Kumaran & Co and Messrs SK Lee to cease to act for the defendant. Hence, the Sessions Court's decision; and

(ii) P&O did not apply to intervene in the negligence suit before the plaintiffs obtained the Sessions Court's judgment.

[40] With respect, we do not agree. We are of the view that P&O is not estopped by its conduct from proceeding with encls. 25, 28, and 40. This decision is premised on the following evidence and reasons:

(i) Messrs VM Kumaran & Co and Messrs SK Lee were initially appointed by P&O to act for the defendant in the negligence suit. This was understandable because generally (in the absence of fraud by, among

others, the defendant), P&O would be liable under the policy to indemnify the defendant and to pay to the plaintiffs the judgment sum adjudged by the Sessions Court in the negligence suit pursuant to s. 96(1) of the RTA.

(ii) P&O's conduct was due solely to its discovery. More importantly, P&O's conduct was the only lawful option available to it. This was because P&O could not allege fraud on the part of the defendant and, at the same time, continued to instruct Messrs VM Kumaran & Co and Messrs SK Lee to act for the defendant in the negligence suit. Accordingly, P&O's conduct cannot restrain, let alone estop it from exercising its right to resist the insurer's statutory liability under s. 96(1) of the RTA based on the P&O's averment (fraudulent negligence suit); and

(iii) the doctrine of equitable estoppel is applied by courts so as to achieve justice. In this case, P&O had raised the P&O's averment (fraudulent negligence suit). If P&O is estopped by its conduct from raising the P&O's averment (fraudulent negligence suit), this will cause an injustice to P&O.

[41] In this case, the plaintiffs obtained the Sessions Court's judgment on 28 September 2017 (Appeals 579 and 580) and on 29 March 2017 (Appeal 493). The plaintiffs only demanded P&O to pay the total sum of damages, interest, and costs on 28 August 2020 and 18 September 2020, respectively. There was an inordinate delay of more than two years from the date of the Sessions Court's judgments before the plaintiffs demanded P&O to honour the Sessions Court's judgments under s. 96(1) of the RTA. Such inequitable conduct by the plaintiffs, in our view, disentitles the plaintiffs from relying on the equitable doctrine of estoppel to support these three appeals.

What Is The Effect Of The High Court's Policy Invalidation Order And The High Court's Dismissal (P&O's Suit)?

[42] The High Court's policy invalidation order does not bind the plaintiffs because P&O did not cite the plaintiffs as co-defendants in the intervener's suit (policy invalidation). As the plaintiffs had been deprived of their right to be heard in the intervener's suit (policy invalidation), P&O cannot rely on the High Court's policy invalidation order to resist these three appeals.

[43] We are of the view that the High Court's dismissal (intervener's suit) is of no consequence in these three appeals because P&O's averment (fraudulent negligence suit) can only be tried in the Sessions Court. It is to be emphasised that no evidence had been adduced in the negligence suit. In other words, the question (intervener/plaintiffs/defendant) is still a live issue.

A *Abuse Of Court Process*

[44] The plaintiffs submit that P&O had abused the court process by:

(i) filing encls. 25, 28, and 40 in the negligence suit; and

(ii) instituting the intervener's suit (plaintiffs) where P&O had obtained an interlocutory injunction from the High Court to restrain the plaintiffs from executing the Sessions Court's judgment until the High Court's disposal of the P&O's suit (plaintiffs) (P&O's interlocutory injunction (plaintiffs));

[45] We are of the view that the exercise of the P&O's right to resist the insurer's statutory liability under s. 96(1) of the RTA cannot constitute an abuse of the court process, especially in light of P&O's discovery and P&O's averment (fraudulent negligence suit).

[46] More importantly, we find that the Sessions Court had not commenced a trial to decide the negligence suit and has yet to decide on P&O's averment (fraudulent negligence suit). It is crystal clear that the question (P&O/plaintiffs/defendant) regarding the P&O's averment (fraudulent negligence suit) is a live issue. Therefore, we are of the view that P&O's three appeals (encls. 25, 28 and 40) had not become academic.

Conclusion

[47] Premised on the above evidence and reasons, the three appeals are dismissed with the following order:

(i) P&O is allowed to intervene as the second defendant in the negligence suit;

(ii) therefore, the Sessions Court's judgment in the respective appeals is set aside;

(iii) the negligence suit is remitted to the Sessions Court for an early trial before another Sessions Court Judge with liberty to all parties to:

(a) file further pleadings; and

(b) obtain pre-trial case management directions from the Sessions Court Judge;

(iv) we make no order as to costs; and

(v) the case is fixed for case management in the Sessions Court at Johor Bahru on 24 March 2025 by way of e-review.